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Court Seeks Outside Advice on Cooke Court-Martial

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The U.S. Court of Military Appeals has issued an extraordinary order to help it decide whether the Air Force should be barred from court-martialing 2nd Lt. Christopher M. Cooke on espionage charges.

In a one-paragraph order, the three-judge court invited a broad spectrum of government agencies and legal organizations to comment on the promises of immunity that were conveyed to Cooke by Air Force investigators last spring. He gave them what has been described as a full confession and was subsequently ordered to face a court-martial on charges of turning over Titan II missile secrets to the Soviet Union.

Those asked to present friend-of-the-court briefs ranged from the Justice Department to the American Civil Liberties Union. The order suggested that the court is at least considering a precedent-setting decision.

The Air Force has insisted that the promises were not binding and began Cooke's court-martial at Andrews Air Force Base in September. The proceedings were recessed after the military judge, Lt. Col. David Orser, refused to dismiss the case.

He ruled that Cooke's confession was tainted because of the "unauthorized promises of immunity" he got, but he held that Cooke should stand trial in light of the Air Force's claims

that it still had enough independent evidence of his surreptitious calls and visits with Soviet diplomats to proceed against him.

In a brief filed in the Court of Military Appeals this month, Cooke's lawyers accused the Air Force of resurrecting old arguments that had been rebutted before Judge Orser and of giving the court a distorted account of the promises Cooke got from his interrogators.

Air Force lawyers had contended in their brief that "no promises of immunity were made" and that all Cooke was offered was the possibility of an honorable discharge.

Cooke's attorneys protested that this "newest government version totally ignores both the evidence of record" and Orser's findings. Orser ruled Sept. 22 that the chief legal officer of the Strategic Air Command "did communicate . . . there would be no prosecution" in the case if Cooke would make a full disclosure of his activities and pass a polygraph test.

"The petitioner [Cooke] fulfilled his part of the agreement," the lawyers for the former Titan II missile officer declared. "The government is now attempting to renege." They said the underlying theme of the Air Force pleadings is that "Lt. Cooke is a bad person and therefore the ends justify the means."

In its short ruling, the court drew attention to a single paragraph in the Manual for Courts-Martial that

states: "An authority competent to order a person's trial by general court-martial may grant or promise him immunity from trial. A grant of immunity may be interposed as a bar to trial if the trial in question is contrary to the grant. A promise of immunity may also be interposed as a bar to trial if the trial is contrary to the terms of the promise."

Citing that rule, the appellate judges asked for briefs on the single question: "Under what circumstances may a service member assert a promise of immunity as a bar to prosecution?"

The briefs are due Dec. 3.